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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,000	11/25/2003	Peter L. Collins	NIHB-2264	6530
45160 7590 06/02/2010 WOODCOCK WASHBURN LLP CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891				
EXAMINER				
LUCAS, ZACHARIAH				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
06/02/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/722,000

## Applicant(s)

COLLINS ET AL.

## Examiner

Zachariah Lucas

## Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 20, 22-24, 28, 35, 36 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 20, 22-24, 28, 35, 36 and 46-48 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: CRF Diskette Problem Report

### DETAILED ACTION

1. Claims 1, 20, 22-24, 28, 35, 36, and 46-48 are pending and allowed in the application.

#### *Specification*

2. **(Prior Objection- Withdrawn)** The title of the invention was objected to as not descriptive. In view of the amendment to the specification, the objection is withdrawn.
3. **(Prior Objection- Withdrawn)** The specification was objected to for containing referring to sequences without also identifying them by the sequence identifier assigned to them in the sequence listing as required by 37 CFR 1.821(d). In view of the amendments to the specification, the objection is withdrawn.
4. **(New Objection)** This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). A computer readable form (CRF) of the sequence listing was submitted. However, the CRF could not be processed by the Scientific and Technical Information Center (STIC) for the reason(s) set forth on the attached CRF Diskette Problem Report.

Direct the reply to the undersigned. Applicant is requested to return a copy of the attached CRF Diskette Problem Report with the reply.

***Claim Rejections - 35 USC § 112***

5. **(Prior Rejection- Withdrawn)** Claims 1, 20, 22-24, 28, 35, 36, and 46-48 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite with respect to the limitation requiring the presence of a mutation in the L gene identified as D1183D. In view of the amendment of the claims to identify the mutation as encoding D1183E in the L gene the rejection is withdrawn.

***Double Patenting***

6. **(Prior Rejection- Withdrawn)** Claims 1, 20, 22-24, 28, 35, 36, and 46-48 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-78 of U.S. Patent No. 6,699,476. In view of the terminal disclaimer of May 17, 2010, the rejection is withdrawn.

***Conclusion***

7. This application is in condition for allowance except for the following formal matters:  
See the objection to the sequence listing above.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

8. Claims 1, 20, 22-24, 28, 35, 36, and 46-48 are allowed. It is noted that the claims refer to nucleic acid positions within the RSV genome. The teachings of the patent indicate that the locations of these mutations would have been understood by those of ordinary skill in the art

Art Unit: 1648

based on reference to known published sequences of the RSV A genome. See e.g., page 130 (lines 29-38), 132 (lines 15-20), and page 134 (Table 36). The claims are therefore deemed definite.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is (571)272-0905. The examiner can normally be reached on Monday-Friday, 8:30 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert B. Mondesi can be reached on 571-272-0956956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Zachariah Lucas/  
Primary Examiner, Art Unit 1648